IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

CRP.No. 861 of 2007()

EP 50/98 in OS.403/1992 of SUB COURT,KATTAPPANA

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REVN. PETITIONERS: JUDGMENT DEBTORS

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1. S.MOHANDAS, ARUN NIVAS, KUMILY KARA, KUMILY VILLAGE, IDUKKI DISTRICT.

2. K.R.OMANA, W/O.S.MOHANDAS, ARUN NIVAS, KUMILY KARA, KUMILY VILLAGE, IDUKKI DISTRICT.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENT: DECREE HOLDER

K.J.ANTONY, S/O.JOSEPH,
KOLLAMPARAMBIL HOUSE,
ATTAPPALAM KARA, KUMILY VILLAGE,
IDUKKI DISTRICT.

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 28/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.Krishnan, J.

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C.R.P.No.861 of 2007

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Dated this the 29th day of September, 2007.

ORDER

This revision petition is preferred against the order of the Subordinate Judge, Kattappana whereby, the court directed delivery of possession of the property to the petitioner therein. Aggrieved by that decision, the revision petitioners have come up before this Court.

2. Brief facts necessary for the disposal of the revision are that there was a money decree against the defendant and in execution of the money decree, the property belonging to the second revision petitioner was sold in auction, confirmed, sale certificate issued and on the strength of the sale certificate application for delivery had been filed and it is pending before the concerned court. Learned counsel for the revision petitioners very strongly contends before me that the petition is not maintainable as E.P. because delivery of the property is to be

applied under Order 21 Rule 95 of C.P.C. and since it is not done, the Execution Petition filed is not maintainable in law and further, if it is an execution application, it has to be filed only in the E.P. which was pending before the Subordinate Judge, Thodupuzha and therefore the court at Kattappana has no jurisdiction at all to entertain the matter.

3. Learned counsel had already relied on the decision of the Apex Court reported in **Ganpat Singh** v. **Kailash Shankar** - A.I.R. 1987 S.C. 1443 where the Apex Court was considering regarding the question of limitation and the applicability of Order 21 Rule 95 of C.P.C. The Apex Court held that Order 21 Rule 95 of C.P.C. is in the form of an application and not in the form of original Execution Petition. The learned counsel also referred to the decision reported in **Haneefa** v. **United Finance Corporation** - 2006(1) K.L.T. 416. It has to be stated that the whole matter here had arisen on account of the factum of the establishment of Subordinate Court at Kattappana. There was only a court at Thodupuzha and later a court was established at Kattappana. The question whether the matter has to go back to the court at Thodupuzha or Kattappana was a subject matter of

discussion and the finding in R.P.No.342 of 2006 in C.R.P.No.1099 of 2000. On consideration of the materials, this Court has held thus:

> "It is held that the Subordinate Judge's Court, Kattappana is having jurisdiction to proceed with the matter and that the petition is not to be sent to the Sub Court, Thodupuzha which passed the decree."

4. It is also clearly settled that when a new court is established, the transferor court or the transferee court can exercise the jurisdiction depending upon the facts and circumstances of each case. Here it is on account of the formation of a new court at Kattappana that a petition for delivery had been moved in that court. One need not have to be hypertechnical on this point because what is sought to be achieved is only to get the decree of the court implemented by methods known to law. The decision relied on by the learned counsel for the revision petitioner only held about the nature of the petition when a question of limitation was raised for consideration. Here, no such question arises and not only that this Court sitting in revision, has held that the court at

Kattappana can proceed with the matter. There is no further revision or Special Leave Petition before the Apex Court and therefore, the jurisdictional aspect of the Court at Kattappana has become final. The court need not defeat justice by simply permitting the party to have technical arguments of this nature.

5. Therefore, I do not find any ground to interfere with the decision rendered by the court below and therefore the Civil Revision Petition is dismissed.

M.N.Krishnan,
Judge.

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